

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK COUNTY----- X
ERNESTO MCKENZIE,

SUMMONS

Plaintiff, Index No.:

-against-

The Basis of Venue is:
Location of IncidentTHE CITY OF NEW YORK, NYPD POLICE OFFICER
ANGEL MARTINEZ, Shield No. 25478 and POLICE
OFFICER JOHN DOES NUMBERS ONE THROUGH
TEN,Plaintiff designates New York
County County as the place of
trial.Defendants.
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To the above named Defendants:

You are hereby summoned to answer the Verified Complaint in this action, and to serve a copy of your Verified Answer to the Verified Complaint, or, if the Verified Complaint is not served with this Summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this Summons, exclusive of the day of service, where service is made by delivery upon you within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: New York, New York
June 9, 2020

Yours, etc.

_____
CAITLIN ROBIN, ESQ.
CAITLIN ROBIN AND ASSOCIATES PLLC
Attorney for Plaintiff
30 Broad Street Suite 702
New York, New York 10004
(646)-524-6026

TO: THE CITY OF NEW YORK, Corporation Counsel, 100 Church Street, NY, NY 10007

NYPD POLICE OFFICER ANGEL MARTINEZ, Shield No. 25478, NYPD PSA 6
2770 Frederick Douglas Blvd, Manhattan, NY 10039

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK COUNTY

----- X

ERNESTO MCKENZIE,

Plaintiff,

INDEX NO.:

VERIFIED COMPLAINT

-against-

THE CITY OF NEW YORK, NYPD POLICE OFFICER
ANGEL MARTINEZ, Shield No. 25478 and POLICE
OFFICER JOHN DOES NUMBERS ONE THROUGH
TEN,

JURY TRIAL DEMANDED

Defendants.

----- X

Plaintiff ERNESTO MCKENZIE, by his attorneys, Caitlin Robin & Associates, PLLC,
as and for his Verified Complaint herein, alleges upon information and belief as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action to recover money damages arising out of defendants' violation of plaintiff's rights as secured by the Civil Rights Act, 42 U.S.C. Sections 1983 and 1988, and of rights secured by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and the common law and the laws of the State of New York. On November 11, 2019, at approximately 4:00 p.m., plaintiff ERNESTO MCKENZIE, while lawfully inside his apartment located at 2999 8th Avenue, New York, New York, was subject to an unlawful search, false arrest, and false imprisonment by the defendant New York City police officers. Plaintiff was maliciously prosecuted and denied the right to due process and a fair trial until all charges against plaintiff were dismissed and sealed in their entirety on or about April 13, 2020. Plaintiff was deprived of his constitutional and common law rights when the individual defendants unlawfully searched, confined, falsely arrested, falsely imprisoned, maliciously prosecuted, and denied Plaintiff the right to due process and a fair trial in violation of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, the common law and the laws of the State of New York.

PARTIES

2. Plaintiff ERNESTO MCKENZIE is a resident of the state of New York.

3. NYPD POLICE OFFICER ANGEL MARTINEZ, Shield No. 25478, NYPD PSA 6, is and was at all times relevant herein, an officer, employee, and agent of the New York City Police Department.

4. NYPD POLICE OFFICER ANGEL MARTINEZ, Shield No. 25478, NYPD PSA 6, was at all times relevant herein, assigned to the NYPD PSA 6 Precinct.

5. NYPD POLICE OFFICER ANGEL MARTINEZ, Shield No. 25478, NYPD PSA 6, is being sued in his individual and official capacity.

6. New York City Police Officers John Does #1-10 are and were at all times relevant herein officers, employees, and agents of the New York City Police Department.

7. Police Officer John Does Does #1-10 are being sued in their individual and official capacities.

8. At all times relevant herein, the individual defendants were acting under color of state law in the course and scope of their duties and functions as agents, servants, employees and officers of the New York City Police Department, and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. They were acting for and on behalf of the New York City Police Department at all times relevant herein, with the power and authority vested in them as officers, agents and employees of the New York City Police Department and incidental to the lawful pursuit of their duties as officers, employees and agents of the New York City Police Department.

9. Defendant City of New York is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a Police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible. The defendant City of New York assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risks attach to the public consumers of the services provided by the New York City Police Department.

10. Plaintiff in furtherance of his causes of action brought pursuant to New York State law filed a timely Notice of Claim against the CITY OF NEW YORK in compliance with the Municipal Law Section 50 and in accordance with New York State law.

11. In accordance with New York State law and General Municipal Law Section 50, plaintiff testified at a hearing held pursuant to General Municipal Law Section 50-H.

12. More than thirty (30) days have elapsed since service of said Notice of Claim was filed and THE CITY OF NEW YORK has failed to pay or adjust the claims.

13. This action falls within one or more of the exceptions as set forth in CPLR Section 1602, involving intentional actions, as well as the defendant, and/or defendants, having acted in reckless disregard for the safety of others, as well as having performed intentional acts.

14. Plaintiff has sustained damages in an amount in excess of the jurisdictional limits of all the lower Courts of the State of New York.

STATEMENT OF FACTS

15. On November 11, 2019, at approximately 4:00 p.m., Plaintiff was lawfully present inside his apartment at 2999 8th Avenue, New York, New York, when the defendant police officers unlawfully handcuffed and falsely arrested Plaintiff without probable cause, or any legal justification.

16. At the above time and place, Plaintiff was inside his three bedroom apartment watching a movie with his seven children.

17. Plaintiff was inside the back bedroom with his children because the front room of the house had been painted that same day.

18. The back bedroom door was closed because Plaintiff did not want any of his children potentially inhaling the paint fumes from the front of the apartment.

19. Halfway through the movie, the Plaintiff got up to go to the bathroom inside his apartment.

20. When Plaintiff left the back bedroom and entered the front area of the apartment to use the bathroom, he noticed someone at the peephole of the front door.

21. It appeared to Plaintiff that the person outside the peephole was trying to break into the apartment.

22. Plaintiff, scared, and concerned for the well-being of his children, called 911 to report the intruder.

23. The 911 Operator told Plaintiff they will send police, and not to open to the door.

24. The Plaintiff heard someone screaming outside the peep hole, "OPEN THE DOOR!"

25. Plaintiff called 911 approximately five times throughout the encounter.

26. The 911 operator instructed Plaintiff to wait for police to arrive before opening the door.

27. As soon as Plaintiff heard "Police" and saw a badge at the peephole, he immediately opened the front door.

28. When Plaintiff opened the front door, five defendant Police Officers rush into the apartment.

29. Plaintiff is immediately thrown against a wall, and unlawfully handcuffed by Defendant Officers.

30. At no time relevant herein did Plaintiff commit a crime or violate the law in any way, nor did the police officer have an objective reason to accuse Plaintiff committing a crime or violating the law in any way.

31. Nevertheless, Plaintiff was unlawfully arrested and handcuffed by defendant officers without legal justification or probable cause.

32. At no point in time did Plaintiff resist arrest in any way.

33. Plaintiff was searched, and no contraband or anything illegal was found on him.

34. Plaintiff was arrested in front of all seven of his children, most of whom were crying while the police handcuffed Plaintiff.

35. Plaintiff asked the Defendant Officers what he was being arrested for, but the Defendants refused to tell him.

36. Plaintiff was transported to the NYPD 32nd Precinct for processing.

37. At the 32nd Precinct, Plaintiff repeatedly asked for medical attention and insulin, due to his diabetes.

38. The Defendants refused to give the Plaintiff insulin, or take him to the hospital for treatment for his diabetes.

39. Plaintiff was then transported from the precinct to New York County County Central Bookings.

40. Plaintiff spent the night in Central Bookings.

41. The defendant police officers provided the District Attorney's Office with the false, misleading and/or incomplete information that plaintiff committed the crime of Obstructing Governmental Administration, inside his own home.

42. On November 12, 2019, after approximately 24 hours in unlawful custody, Plaintiff was arraigned in New York County County Criminal Court, and charged with crimes that the defendant officers had no basis to allege that he committed.

43. Plaintiff was unlawfully charged with Obstructing Governmental Administration, in his own home.

44. Plaintiff was released on his own recognizance, and was given a new Court date.

45. On or about April 13, 2020, all charges against Plaintiff were dismissed and sealed.

46. Some of the police officer defendants observed the violation of Plaintiff's rights under the Constitution of the United States and New York State Law and did nothing to prevent their fellow officers from unjustifiably searching, seizing, falsely arresting and imprisoning, denying the right to due process and a fair trial, and maliciously prosecuting of Plaintiff.

47. The unlawful, search, seizure, false arrest and imprisonment, denial of the right to a fair trial, and malicious prosecution of Plaintiff by the individually named defendants caused Plaintiff to sustain physical, psychological and emotional trauma.

FIRST CAUSE OF ACTION

Violation of Plaintiff's Fourth and Fourteenth Amendment Rights

48. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 47 with the same force and effect as if more fully set forth at length herein.

49. The individually named police officer defendants while acting in concert and within the scope of their authority, caused Plaintiff to be seized, unlawfully searched, falsely arrested, and falsely imprisoned, and maliciously prosecuted without reasonable suspicion and/or probable cause, in violation of Plaintiff's right to be free of an unreasonable seizure under the Fourth Amendment of the Constitution of the United States and to be free of a deprivation of liberty under the Fourteenth Amendment to the Constitution of the United States.

50. As a result of the aforementioned conduct of defendants, Plaintiff sustained injuries, including but not limited to physical, emotional, psychological and economic injuries.

SECOND CAUSE OF ACTION

False Arrest and False Imprisonment

51. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 50 with the same force and effect as if more fully set forth at length herein.

52. The acts and conduct of the defendants constitute false arrest and false imprisonment under the laws of the State of New York. Defendants intended to confine Plaintiff and, in fact, confined Plaintiff, and Plaintiff was conscious of the confinement. In addition, Plaintiff did not consent to the confinement and the confinement was not otherwise privileged.

53. As a direct and proximate result of such acts, defendants deprived Plaintiff of his rights under the laws of the State of New York and the United States Constitution.

54. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

55. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

56. As a result of the aforementioned conduct of defendants, Plaintiff sustained injuries, including but not limited to physical, economic, emotional and psychological injuries.

THIRD CAUSE OF ACTION

Unlawful Search

57. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 56 with the same force and effect as if more fully set forth at length herein.

58. The illegal approach, pursuit, stop and search employed by defendants herein terminated Plaintiff's freedom of movement through means intentionally applied.

59. Defendants lacked probable cause to search Plaintiff.

60. As a direct and proximate result of such acts, defendants deprived Plaintiff of his rights under the laws of the State of New York.

61. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

62. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

63. As a result of the aforementioned conduct of defendants, Plaintiff sustained injuries, including but not limited to emotional and psychological injuries.

FOURTH CAUSE OF ACTION

Violation of Plaintiff's Fifth and Fourteenth Amendment Rights

Denial of Right to Fair Trial/Due Process

64. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 63 with the same force and effect as if more fully set forth at length herein

65. Defendants, individually and collectively, manufactured and/or withheld false evidence and forwarded this false evidence to prosecutors in the New York County County District Attorney's Office.

66. Defendants filled out false and misleading police reports and forwarded them to prosecutors in the New York County County District Attorney's Office.

67. Defendants signed false and misleading criminal court affidavits and forwarded them to prosecutors in the New York County County District Attorney's Office.

68. In withholding/creating false evidence against plaintiff ERNESTO MCKENZIE, and in providing/withholding information with respect thereto, defendants violated plaintiff's constitutional right to due process and fair trial under the New York State Constitution and under the Due Process Clause of the Fifth Amendment to the Constitution of the United States and to be free to deprivation of liberty under the Fourteenth Amendment to the United States Constitution.

69. As a result of the foregoing, Plaintiff ERNESTO MCKENZIE, sustained, inter alia, loss of the right to due process and a fair trial, loss of liberty, emotional distress, embarrassment and humiliation, lost earnings and deprivation of his constitutional rights.

70. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

71. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

72. As a result of the aforementioned conduct of defendants, Plaintiff sustained injuries, including but not limited to emotional and psychological injuries.

FIFTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

73. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 72 with the same force and effect as if more fully set forth at length herein.

74. By the actions described herein, defendants, each acting individually and in concert with each other, engaged in extreme and outrageous conduct, conduct utterly intolerable in a civilized community, which negligently caused severe emotional distress to Plaintiff, ERNESTO MCKENZIE,. The acts and conduct of the defendants were the direct and proximate cause of injury and damage to Plaintiff and violated Plaintiff's statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

75. The acts and conduct of the defendants were the direct and proximate cause of injury and damage to Plaintiff and violated Plaintiff's statutory and common law rights as guaranteed Plaintiff by the laws and Constitution of the State of New York.

76. As a direct and proximate result of such acts, defendants deprived Plaintiff of his rights under the laws of the State of New York.

77. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

78. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

79. As a result of the aforementioned conduct of defendants, Plaintiff sustained injuries, including but not limited to emotional and psychological injuries.

SIXTH CAUSE OF ACTION

Negligent Hiring, Retention, Training and Supervision

80. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 79 with the same force and effect as if more fully set forth at length herein.

81. The City of New York and its employees, servants and/or agents acting within the scope of their employment did negligently hire, retain, train and supervise defendants, individuals who were unfit for the performance of police duties on the aforementioned dates at the aforementioned locations.

82. As a result of the aforementioned conduct of defendants, Plaintiff sustained injuries, including but not limited to emotional and psychological injuries.

SEVENTH CAUSE OF ACTION

Failure to Intervene

83. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 82 with the same force and effect as if more fully set forth at length herein.

84. The defendants that did not physically touch Plaintiff, but were present when other officers violated Plaintiff's Constitutional Rights had an affirmative duty to intervene on behalf of Plaintiff, whose constitutional rights were being violated in their presence by other officers.

85. Defendants failed to intervene to prevent the unlawful conduct described herein.

86. As a result of the foregoing, Plaintiff's liberty was restricted for an extended period of time, he was put in fear of his safety, and he was humiliated and subject to other physical constraints.

87. As a direct and proximate result of such acts, defendants deprived Plaintiff of his rights under the laws of the State of New York.

88. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

89. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

90. As a result of the aforementioned conduct of defendants, Plaintiff sustained injuries, including but not limited to emotional and psychological injuries.

EIGHTH CAUSE OF ACTION

Deliberate Indifference to Medical Needs

91. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 90 with the same force and effect as if more fully set forth at length herein.

92. Defendants despite being aware that Plaintiff was suffering through severe arm pain while in their custody and required medication and additional treatment from medical professionals, they delayed Plaintiff's medical treatment and refused to administer and properly procure, immediate and adequate medical attention.

93. The delay in medical treatment to Plaintiff's injuries resulted in permanent additional ongoing anxiety attacks suffered by Plaintiff that would have been prevented if Plaintiff received treatment in a timely manner.

94. As a direct and proximate result of such acts, defendants deprived Plaintiff of her rights under the laws of the State of New York.

95. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

96. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

97. As a result of the aforementioned conduct of defendants, Plaintiff sustained injuries, including but not limited to emotional and psychological injuries.

NINTH CAUSE OF ACTION

Malicious Prosecution

98. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 97 with the same force and effect as if more fully set forth at length herein.

99. The acts and conduct of the defendants constitute malicious prosecution under the laws of the United States Constitution, State of New York and New York State common law.

100. Defendants commenced and continued a criminal proceeding against Plaintiff.

101. There was actual malice and an absence of probable cause for the criminal proceeding against Plaintiff and for each of the charges for which they were prosecuted.

102. The prosecution and criminal proceedings terminated in Plaintiff's favor on the aforementioned dates.

103. Plaintiff was subjected to a post-arraignment deprivation of liberty sufficient to implicate Plaintiff's Fourth Amendment rights.

104. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

105. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

106. As a result of the aforementioned conduct of defendants, Plaintiff sustained injuries, including but not limited to emotional and psychological injuries.

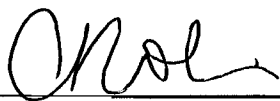
JURY DEMAND

107. Plaintiff hereby demands trial by jury of all issues properly triable thereby.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ERNESTO MCKENZIE demands judgment against the defendants on each cause of action in amounts to be determined upon the trial of this action which exceeds the jurisdiction of lower courts, inclusive of punitive damages and attorneys' fees inclusive of costs and disbursements of this action, interest and such other relief as is appropriate under the law. That the Plaintiff recover the cost of the suit herein, including reasonable attorney's fees pursuant to 42 U.S.C. § 1988.

Dated: New York, New York
June 9, 2020

By: 
CAITLIN ROBIN, ESQ.
CAITLIN ROBIN AND ASSOCIATES PLLC
Attorney for Plaintiff
30 Broad Street Suite 702
New York, New York 10004
(646)-524-6026

TO: THE CITY OF NEW YORK, Corporation Counsel, 100 Church Street, NY, NY 10007

NYPD POLICE OFFICER ANGEL MARTINEZ, Shield No. 25478, NYPD PSA 6
2770 Frederick Douglas Blvd, Manhattan, NY 10039


INDIVIDUAL VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ERNESTO MCKENZIE, being duly sworn, deposes and says: that deponent is Plaintiff in the within action; that deponent has read the foregoing Verified Complaint, and knows the content thereof; that the same is true to deponent's own knowledge, except as the matters therein stated to be alleged upon information and belief, and that as to those matters deponent believes it to be true.

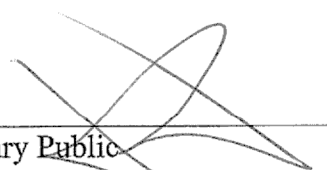
DATED: New York, New York
June 9, 2020

X:


Ernesto McKenzie

Sworn to me this
9th day of June 2020

Notary Public


Julie Anne Larsen
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01LA6352111
Qualified in New York County
Commission Expires 12-19-2020